

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 289 of 1998

with

CIVIL APPLICATION No 8342 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMANBHAI ATMARAM PRAJAPATI

Versus

CHIMANRAO SHANKERRAO

Appearance:

1. Civil Revision Application No. 289 of 1998
MR HR PRAJAPATI for Petitioner
MR JAYVADAN SHAH for Respondent No. 1
2. Civil ApplicationNo 8342 of 1998
MR HR PRAJAPATI for Petitioner
DS AFF.NOT FILED (R) for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/09/98

This Civil Revision Application has been filed against the order dated 20.10.1997 passed by the Appellate Bench of Small Cause Court at Ahmedabad whereby the standard rent of the suit premises is fixed at Rs.40/- per month + municipal tax and education cess. The necessary facts are that the plaintiff filed a HRP suit No.1/83 for eviction of the suit premises on various grounds. The suit for recovery of possession was dismissed. The trial court however, fixed Rs.60/- per month as standard rent + municipal tax and education cess to be paid by the defendant. The tenant preferred appeal against the order of fixing the standard rent @ of Rs.60/- per month. The Appellate Court reversed the finding of the trial court on the question of standard rent and fixed the same @ Rs.40/- per month.

2. It is contended by Mr H R Prajapati, learned Advocate for the petitioner that the trial court, considering the deposition of the plaintiff at Exh.22, deposition of the elder brother of the plaintiff Rambhai Atmaram who inducted the defendant as tenant, deposition of the tenant-Vishnubhai who was inducted as tenant on the upper floor almost about the same time, Exh.39 the rent note dated 11.9.1977 and Exh.27 and deposition of the defendant Exh.50 and rent receipt dated 14.10.1977, Exh.51, fixed the standard rent as Rs.60/- per month plus tax, but this finding of fact has been disturbed by the Appellate Court on a flimsy ground that there is some overwriting in Exh.27. On the other hand, Mr Vyas, learned Advocate submits that the finding of the First Appellate Court does not call for interference by this Court in its revisional jurisdiction. It is also submitted by Mr Vyas that the landlord himself has issued rent receipt for Rs.40/- + Rs.20/- towards taxes.

3. I have considered the rival contentions. In my view, the learned First Appellate Court has committed error in reversing the finding of fact of the trial court on the flimsy ground that there is some over-writing in Exh.27. Even if it is found that there was over-writing at Exh.27, the said document could be excluded from consideration. In view of the deposition of the plaintiff corroborated by the evidence of the elder brother of the tenant at Exh.38 and also the deposition of Vishnubhai at Exh.39, there is sufficient evidence to show that the rent was fixed at Rs.60/- plus taxes. In view of this, the First Appellate Court has committed error in reversing the finding of the trial court on the question of standard rent.

4. In view of the aforesaid, this Revision Application is allowed. The order of the Appellate Bench of Small Cause Court at Ahmedabad in Appeal No 22/90 dated 20.10.1997 is quashed and set aside and the order of the trial court is restored. Rule made absolute.

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msp.